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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Appellant,

v.

RAMON JERMAINE GARRETT,

Defendant and Respondent.

E064362

(Super.Ct.No. RIF1304445)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.  
Reversed.

Michael A. Hestrin, District Attorney, and Emily R. Hanks, Deputy District  
Attorney, for Plaintiff and Appellant.

Christopher Love, under appointment by the Court of Appeal, for Defendant and  
Respondent.

## INTRODUCTION

The People appeal from an order granting the petition of defendant Ramon Jermaine Garrett under Proposition 47 and Penal Code section 1170.18<sup>1</sup> for resentencing of his conviction of second degree burglary (§ 459) as misdemeanor shoplifting (§ 459.5). The People contend that (1) defendant failed to meet his burden of establishing his eligibility for resentencing, (2) his conviction did not qualify for resentencing because he entered a bank with the intent to commit felony identity theft, and (3) the bank was not a commercial establishment within the meaning of section 459.5.

We conclude defendant failed to meet his burden of establishing his eligibility for resentencing, and we therefore reverse.

## FACTS AND PROCEDURAL BACKGROUND

On May 28, 2013, defendant was charged in a felony complaint with one count each of second degree burglary (§ 459—count 1) and possession of a forged check (§ 475, subd. (c)—count 2). The complaint also alleged one strike prior (§§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)) and three prison priors (§ 667.5, subd. (b)). As to count 1, the complaint alleged defendant “enter[ed] a certain building . . . with intent to commit theft and a felony.” As to count 2, the complaint alleged defendant “did wilfully and unlawfully possess a completed check . . . with the intent to utter and pass and facilitate the utterance and passage of the same, in order to defraud . . . .”

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

On June 6, 2013, defendant entered a plea of guilty to second degree burglary (§ 459—count 1) and admitted a strike prior (§§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)). For the factual basis of the plea, defendant affirmed that he “went into a building with the intent to steal something.” The minute order for the plea hearing stated that the “factual basis for the plea is based on COM-Complaint.” The trial court dismissed count 2, and the three state prison priors were stricken. Defendant was sentenced to four years in state prison to run concurrent with another case.

Defendant filed a petition for resentencing on January 7, 2015. The People opposed the petition on the grounds that “per reports [defendant] entered bank & tried to cash fraudulent check,” and that a bank is not a commercial establishment within the meaning of section 459.5.<sup>2</sup> Over the People’s opposition, the trial court granted the petition and redesignated defendant’s conviction a violation of section 459.5.

## DISCUSSION

### **Proposition 47 and Statutory Amendments**

On November 4, 2014, voters approved Proposition 47, the Safe Neighborhoods and Schools Act, which went into effect the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) Proposition 47 reduced certain drug- and theft-related crimes from felonies or wobblers to misdemeanors for qualified defendants and added, among

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<sup>2</sup> The People assert on appeal that on May 22, 2013, defendant entered a bank and tried to cash a check in the amount of \$762.62, and the bank manager determined that the check was fraudulent. The only basis for that assertion is the People’s own opposition to defendant’s petition for resentencing; no other support for that assertion has been provided either in the trial court or on appeal. We therefore do not consider the People’s unsupported assertion of the underlying facts in our analysis.

other statutory provisions, section 1170.18. Section 1170.18 creates a process through which persons previously convicted of crimes as felonies, which would be misdemeanors under the new definitions in Proposition 47, may petition for resentencing. (See generally *People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108-1109.) Specifically, section 1170.18, subdivision (a), provides: “A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under [Proposition 47] . . . had [Proposition 47] been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by [Proposition 47].”

### **Standard of Review**

When interpreting a voter initiative, “we apply the same principles that govern statutory construction.” (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) We first look ““to the language of the statute, giving the words their ordinary meaning.”” (*Ibid.*) We construe the statutory language “in the context of the statute as a whole and the overall statutory scheme.” (*Ibid.*) If the language is ambiguous, we look to ““other indicia of the voters’ intent, particularly the analyses and arguments contained in the official ballot pamphlet.”” (*Ibid.*)

## **Defendant Failed to Meet His Burden of Establishing Eligibility for Resentencing**

The newly created crime of shoplifting is defined as follows: “Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary.” (§ 459.5, subd. (a).)

As the petitioner, defendant bore the burden of establishing that he satisfied the criteria for relief. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879.) In his petition, defendant merely asserted that his conviction was for a nonviolent crime, and he requested resentencing solely on the basis that he had been convicted of second degree burglary. Defendant established by his plea only that he “went into a building with the intent to steal something.” Thus, the plea did not establish that defendant entered a commercial building during regular business hours or that the value of the property was less than \$950.

We conclude defendant failed to meet his burden of showing his eligibility for resentencing, and the trial court therefore erred in granting his petition.

DISPOSITION

The order appealed from is reversed.

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McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.